

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.4389 of 1998

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For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? YES
2. To be referred to the Reporter or not? YES
3. Whether Their Lordships wish to see the fair copy of the judgement? NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO
5. Whether it is to be circulated to the Civil Judge? NO

PUNAMBHAI MADHABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR KS JHAVERI for Petitioner
Ms.Katha Gajjar, ASSTT GOVERNMENT PLEADER
for Respondent No.1 and 2.
NOTICE SERVED BY DS for Respondent No. 3
MR YN OZA for Respondent No. 4

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 20/06/98

ORAL JUDGEMENT :

Heard Shri Jhaveri, learned advocate for the petitioner; Ms.Gajjar, AGP for respondents nos.1 and 2 and Shri Oza, learned advocate for respondent no.4.

2. Rule on the petition. Shri Oza, learned advocate

waives service of the rule on behalf of respondent no.4 and Ms.Gajjar, AGP waives on behalf of respondents nos.1 to 3.

3. The petitioner is Sarpanch of Tarapur Gram Panchayat, District Anand. He was removed from the said post under sec.57(1) of Gujarat Panchayats Act, 1993 ("the Act" for brevity) on the ground of financial impropriety. Appeal lies against that order to the State Government under sec.57(3) of the Act. He having filed that appeal, the same was heard by the Additional Development Commissioner. The Additional Development Commissioner noted that there was a Caveat by respondent no.4. He, therefore, granted ad interim stay on 2.6.1998 and placed the matter for hearing on 8th June 1998. What was, therefore, expected of respondent no.4 was to appear before the Additional Development Commissioner. Instead of doing that respondent no.4 preferred revision against that order invoking section 259 of the Act and the Deputy Secretary of the Panchayat & Rural Development Department stayed the order of the Additional Development Commissioner by his order dated 4th June 1998. Being aggrieved by that order the present petition has been filed.

4. Earlier when this matter came up on 8th June 1998, the order of the Deputy Secretary was directed to be suspended and the petitioner was allowed to continue to be in-charge of the village as Sarpanch. The short question involved in this matter is as to whether the revisional powers under sec.259 can be exercised against the order under sec.57(3). The appeal under sec.57(3) lies to the State Government. The Additional Development Commissioner has acted on behalf of the State Government while passing this order. In such circumstances revision cannot lie to the State Government against its own order in exercise of powers under sec.259 of the Act. That apart power under sec.259 of the Act is confined to the proceedings of any Panchayat or any committee therein. The words thereafter in the section are "of any officer". Shri Oza, learned advocate states that the phrase "of any officer" can be used to exercise revisional jurisdiction against the order of the Additional Development Commissioner. This certainly cannot be. The phrase "of any officer" will have to be read ejusdem genesis. The section is meant for supervisory jurisdiction against the order of the Panchayat or its committee or its officer and not any officer of the State Government.

5. In the circumstances this petition will have to be entertained. The impugned order of the State

Government dated 4th June 1998 will have to be stayed. Order dated 4th June 1998 of the Deputy Secretary is accordingly set aside and the order of Additional Development Commissioner is restored, as a result of which the petitioner will continue to function as Sarpanch until the Appeal is heard and decided by the Additional Development Commissioner.

6. Shri Oza, learned advocate states that he will appear before the Additional Development Commissioner, who will decide the matter on merits. The rival contentions of both the parties with respect to the allegations of the financial impropriety or otherwise will be gone into by the Additional Development Commissioner.

7. I am told that the matter is to come up before the Additional Development Commissioner on 22nd June 1998. The officer will endeavour to dispose of the same expeditiously, preferably by the end of July 1998.

8. The petition is allowed and rule is made absolute accordingly. No order as to costs.

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